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Raas, Johnsen & Stuen, P.S.

November 15, 2007

Mr. Harry L. Johnsen III
Attorney at Law
1503 E St
Bellingham, WA 98225-3007

RE: ***United States and Lummi Nation v. State of Washington, Department of Ecology et al.***
U.S. District Court Case No. C01-0047Z

Dear Mr. Johnsen:

This letter is to confirm the conversation we had on November 13, 2007, concerning errors of fact in Judge Zilly's Order Conditionally Approving Settlement Agreement, entered in this case on November 2, 2007. I understand that when you called, Lummi was considering whether it should file a request that the Judge amend his Order in an effort to avoid future misunderstandings or misinterpretations of the settlement.

- 1.) The State agrees that the 95 afy representing the water Lummi is already providing to non-members is not within Ecology's regulatory authority under the settlement, notwithstanding Judge Zilly's erroneous description of it at one point in his November 2, 2007 decision. That 95 afy is part of the Lummi Allocation. The Ecology Allocation is 120.89 afy at this point, subject to adjustment pursuant to the terms of the settlement.
- 2.) The State does not contend that the US complaint included a request for determination of Lummi's surface water rights or ground water rights outside the Case Area, again despite Judge Zilly's erroneous statement to the contrary in his background summary in the November 2, 2007 decision.

Thank you for the thought and effort you have put into making this settlement a reality.

Sincerely,

Barbara A. Markham
Assistant Attorney General
(360) 586-6749

BAM:pd
cc: Ken Slattery